

REMARKS

In response to the above-identified Office Action dated January 19, 2006, Applicant amends the application and seeks reconsideration thereof. In this response, 3 claims have been amended, no claims have been added and no claims have been cancelled. Accordingly, Claims 1-19 are pending.

Claims Rejection Under 35 U.S.C. §102

The Examiner has rejected Claims 1-2 and 13-14 under 35 U.S.C. §102 as being anticipated by Myers, U.S. Patent 5,373,591 ("Myers"). Applicant respectfully traverses this rejection.

It is axiomatic that to anticipate a claim, every element of the claim must be disclosed within a single reference. Applicant has amended Claim 1 to make clear that the longitudinal members (the members defined the wheel track) follows the long dimension of the bath enclosure. As can be seen throughout Myers, the members defining the wheel track run perpendicular to the long dimension of the bath enclosure on which they are installed. Both its structure and its intended use preclude a modification of Myers to permit the members having the wheel tracks from following the long dimension of the bath enclosure. In this connection, Applicant notes that the wheel tracks of Myers are perpendicular to the facing direction of the seat. Thus, if the wheel tracks follow the long dimension, the seat would face the short dimension which would not be suitable for its intended purpose. For at least this reason, Claim 1 is not anticipated by Myers.

With respect to Claim 2, since the element in which the Examiner relies for teaching the longitudinal member does not satisfy the limitations required of the longitudinal members in Claim 1, Claim 2 is also not anticipated.

With respect to Claim 13, Applicant has amended the claim for clarity without any change in scope. Applicant respectfully submits that Myers fails to teach a pressure fit between end members and vertical surfaces of a bath enclosure. In fact, Myers fails to teach a pressure fit in any context. Rather, the structure of Myers is coupled to the tub with hardware, e.g., screws. In an absence of a pressure fit for any member and most particularly any end member, to a vertical surface of a bath enclosure, precludes a finding of anticipation of Claim 13. In view of the foregoing, it is respectfully requested that rejections of Claims 1-2 and 13-14 under 35 U.S.C. §102 be withdrawn.

Claims Rejection Under 35 U.S.C. §103

The Examiner has rejected Claims 16 and 17 under 35 U.S.C. §103 as being unpatentable over Myers. Applicant has amended Claims 16 consistent with the amendment discussed above in connection with Claim 1. Analogous arguments apply. With respect to Claim 17, Applicant respectfully submits that less than 15% of the longitudinal member (following the longitudinal dimension of the bath enclosure) being disposed on a surface of the bath enclosure is neither taught nor suggested by Myers. In view of the foregoing, it is respectfully requested that rejections under 35 U.S.C. §103 of Claims 16 and 17 be withdrawn.

The Examiner has rejected Claims 6 and 8-9 under 35 U.S.C. §103 as being unpatentable under Myers in view of Baker, U.S. Patent 5,606,751 ("Myers"). Applicant respectfully traverses this rejection.

With respect to Claim 6, Applicant respectfully submits that neither reference teaches nor suggests "a seat portion hingedly coupled to the back portion and moveable between a use position and a stowed position. "Conventional linguistic construction requires that the clause "and moveable between a use position and a stowed position" modify seat and not the back

portion. At most, Baker teaches a back portion, which is moveable relative to the seat portion. However, in no event does the seat portion move between a use position and a stowed position. As a result, neither Baker nor the combination of Baker and Myers satisfies the limitations of Claim 6. Applicant notes that once the wheels of Myers are within the wheel tracks, it is not possible to move the seat in any manner relative to the back. Thus, the seat cannot be folded up to the back (nor the back to the seat). Moreover, in connection with Baker, while it is possible to fold the back down to the seat, if one were to attempt to fold the seat up to the back, (assuming solely for the sake of argument it was even possible), it would cause the seat to dislodge from the rails. Accordingly, neither reference teaches or suggests the required moveability of the seat about its hinged connection. Thus, Claim 6 is not rendered obvious by the combination.

With respect to Claim 8, it is respectfully submitted that neither Baker nor Myers teach or suggest, the longitudinal members defining slots in an upper wall, the slots overlying the front pair of wheels when the seat is at an extreme range of motion along the wheel tracks. Applicant directs the Examiner's attention to, for example, Figure 1, elements 114 and 124 as described in paragraph 16. These slots provide the mechanism by which the chair can be introduced into the wheel track and also permit the seat to fold up into a stowed position in one embodiment of the invention. This aspect is neither taught nor suggested nor even contemplated in any manner by the references of record.

With respect to Claim 9, Applicant respectfully submits that the removeable arm rests from Myers on which the Examiner relies, fails to meet the limitation of a stowable arm rest of the chair assembly in the context of the existing application for at least two reasons. First, the arm rests are not part of the chair assembly which resides in the wheel track during use. Rather, it is part of the frame in which the shower seat resides when being used away from the

bath enclosure. Secondly, the ability to remove an arm rest is not remotely the same as the ability to stow the armrest where the armrest remains available for easy access relative to the seat. The stowability of the armrest for ready access is particularly important in the context of the physically challenged who may not have the ability to place the armrest in one location, put themselves in the seat and then retrieve the armrest. Both because neither seat assembly in Myers or Baker includes armrests useable in the context of a shower chair and because neither of them teach stowable armrest which remains with the chair. It is respectfully submitted that the combination fails to render Claim 9 obvious. In view of the foregoing, it is respectfully requested that the rejections of Claims 6 and 8-9 be withdrawn.

The Examiner rejected Claims 5, 12 and 15 under 35 U.S.C. §103 as being unpatentable over Myers in view of Herman, U.S. Patent 5,465,437 ("Herman"). Applicant respectfully traverses this rejection.

Applicant respectfully submits that Herman fails to cure the deficiencies discussed above in connection with corresponding independent claims. Accordingly, these claims are at least patentable as depended on a patentable independent claim.

Allowable Subject Matter

Applicant notes with appreciation the Examiner's indication that Claims 3-4, 7, 11 and 18-19 contain allowable subject matter.

CONCLUSION


In view of the forgoing, it is believed that all claims now pending are in condition for allowance and such action is earnestly solicited at the earliest possible date. If there are any additional fees due in connection with the filing of this response, please charge those fees to

our Deposit Account No. 02-2666. Questions regarding this matter should be directed to the undersigned at (310) 207-3800.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.



Susan M. Barrette

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